EXHIBIT B

docket to see if there was an adversary proceeding filed. I agree with that.

But let me ask. The Supreme Court this year talked about notice for due process purposes in the Espinosa case. And they said that actual notice of the plan was enough, even though it was the plan that improperly dealt with the nondischargeable student loan. That was -- it was enough to take it out of 60(b)(4) and was, you know, was sufficient due process. How is this different from that?

MS. SCHWEITZER: Well, what I think is different is that the concern here is that you're taking a process and taking literal procedures and turning on the head the expectations of all parties involved in that process. What you're saying is I'm going to file a plan on you, right, and I've got my plan disclosure statement in the mail.

The exhibit is missing on retained actions. Thirteen days before the objection deadline, I'm going to file a notice of plan supplement on the docket that lists docket numbers, not actual case names, docket numbers, and if you, when you get served by mail in the thirteen days before the confirmation deadline, go to look up that exhibit, you're going to find a link again to 177 docket numbers out of 11,000 potential claims. You're going to go to those links and you're going to hit a roadblock.

And so in those last ten days, if you really do

consider yourself on notice and you really did want to look into this, you're running against the wall and you're running against the wall to find out that the debtors have, in fact, sued you two and a half years earlier.

Now, I understand there are things in bankruptcy that are sometimes preferable notice, the best possible notice versus minimally adequate notice, but the difference here is the debtors didn't merely say, 'I want to tell -- give people comfort that, look, I filed this against you, I don't really mean it.' Or, 'I don't know if I mean it. Let's all sit tight, let's all join the benefit of the breather and the benefit of working through whether these are meritorious claims and we can all do that together.' The debtors, instead, unilaterally, at every turn, said, 'I'm not going to tell you.' And the due process cases around planned disclosure and the res judicata cases around planned disclosure generally say, 'Well, if the debtor preserves everything, everyone knows they're affected.' Right? Or if was just too burdensome for the debtor that they couldn't really possibly have gone through and sorted out the cases so early on in their proceeding, we're going to give them a little slack.

But here the debtors knew exactly what they were preserving. And they didn't serve that plan exhibit on anyone. They didn't unseal the dockets at that point. They didn't even ask for effective relief to seal the dockets in the context of

the plan or to seal a schedule in the plan that would have listed the peoples' names. What they said was, 'Oh, we already got that relief a year and a half earlier and we're going to get it again after the plan is confirmed because it worked so well. Let's just keep doubling down', all on the principal of 'We're protecting ongoing business relationships.'

And to say to people that you, as the defendant, have to be on the watch and you have to come forward when you think something unjust is happening, really shifts the burden on you. You're saying you don't just have a burden to defend against claims; you have a burden to actively monitor dockets and actively ferret out when the debtors are doing things contrary to your expectations. Not just things that they would ordinarily would be entitled to do, but when they're actually burying claims and putting them to the back of the road, well beyond the initial purpose which was just status quo and nonprejudice. Now, you have to spend the time and money -- at what point is a creditor allowed to tell their attorneys, 'Stop spending money.'?

I mean, doing the same math they had given you, if you look at the third extension that was after the plan, you get over to a million dollars in monitoring the docket, spending fifteen minutes a pleading; whether it's the plan or any other motion, times the number of 13,000 motions. You're talking about over a million dollars -- and you're smiling because the

answer is no one spends a million dollars monitoring these cases --

THE COURT: No, I know, but no one spends fifteen minutes on every pleading, either. You know that that --

MS. SCHWEITZER: Take it in half, take it in a quarter, take it in a eighth; tell me my rates are outrageous at 500 dollars an hour. I'm fine with that, but you're telling the clients, every one of these 11,000 transferees, that they have to spend the time monitoring all 13,000 pleadings to make sure there's no 'Gotcha' in there, to make sure the debtor is not still holding on to a claim against them. Because it's not only the 177 that survived, in the debtors' world --

THE COURT: Well, what --

MS. SCHWEITZER: -- it's all 11,000 people.

THE COURT: -- I guess what's missing here is the ability to know whether any of these movants got actual notice. I mean, I find it hard to believe that none of them was aware of what was going on.

MS. SCHWEITZER: Well, I think there are different levels of "aware of what was going on". I think there's a level of 'I didn't know anything that was going on because I didn't even know that Delphi was in bankruptcy.' Right? I mean, there's that level.

THE COURT: Right.

MS. SCHWEITZER: There's 'I knew that Delphi was in

bankruptcy but I didn't know about the statute of limitations' or 'I did know and I didn't see this motion' or 'I didn't understand this motion'. And then there are people who got the motion in the mail, maybe, maybe not, but even people who got the motion in the mail, did they really know that they were a defendant? And I don't think the debtors have ever suggested that they voluntarily told anyone. And I can certainly say for my clients, it wasn't the typical case where you get the letter in the mail warning you.

THE COURT: But it's the -- for me to dismiss all of these complaints on this theory, it has to apply to that last group, right? Someone that got it in the mail, maybe even put two and two together and said, 'Oh, I may be at risk here. Well, I'll just, you know, I'll let it go by.' Isn't it the case that to dismiss these complaints, I have to -- on these motions, I have to find that?

MS. SCHWEITZER: I think you have to find that the debtors -- and, again, this is where it looks back to the due process issues, is that the debtors' wholesale took a position and created a strategy which whatever good intentions they had when they first asked for it and whatever their intentions were even in the spring of 2008, took you down the path where the wholesale matter -- it's unfair to let these proceedings go forward. And particularly when you see the complaints that are at hand because this isn't over in terms of figuring out how

we've been sued and what the notice is. When you look at the sufficiency of the complaints --

THE COURT: Well, that's a separate issue. I understand that issue. That's a separate issue.

MS. SCHWEITZER: I think it's a separate issue, but I think that -- I mean, first, my answer would be yes. You can take notice of the fact that there's a passage of time, that there's been not only two things, a lack of notice -- a lack of adequate notice, and not only a lack of notice but a concerted effort to hide the complaints, coupled with the fact of the passage of time and the things that have happened over that time, the defendants didn't have an opportunity during this time to use those complaints to their advantage, quite frankly. That the -- whether to get information from the debtors before the business were sold and, quite frankly, taking the debtors' explanation at face value, 'We wanted to preserve business relationships because we didn't want adverse consequences to flow from the knowledge that these complaints existed.'

What did that mean? People could have said, 'I'm doing business with you and I don't want to keep doing business with you.' 'I'm doing business with you but I want these claims settled, as a part of doing business with you.' 'I'm not doing business with you, but I would happily trade away some of these claims for doing business with you.' 'I got a plan in the mail but you know what? Everything is going so

smoothly with you, I'm going to say' --

THE COURT: But, again, isn't that on a case-by-case basis? I mean, I -- as far as I can see, there's one case that concludes that 4(m) relief was improperly granted and that case wasn't on due process grounds. The Ninth Circuit just said, 'You know, we don't really set a standard for when it's improperly granted, but it was improperly granted.' So, I mean, it just seems to me that it's much more of a case-by-case analysis, depending on the, you know, the harm that happened to people.

MS. SCHWEITZER: Right. Well, I guess --

THE COURT: With the exception -- let me stop you.

MS. SCHWEITZER: Okay.

THE COURT: With the exception that under Rule 60(b)(4), if someone really didn't get notice of the extension motions, then it would seem to me they should be able to argue to me as if the motions were being made right now, although I'll hear the debtors on that. But, that seems to be the way to look at it.

MS. SCHWEITZER: Right. Well, Your Honor --

THE COURT: And then, the notice that would trigger the Rule 60(b)(4) analysis would be due process notice and consistent with not only Espinosa, but Mulane and the like. It's true, if -- if the notice was buried or confusing or the like, then I would understand that, too, as a violation of due

process. I mean, a Chapter 13 plan is probably a little easier to deal with than a case that probably has a hundred docket entries, than thousands.

MS. SCHWEITZER: Well, I would certainly take the position that you're in a position to find a per se violation but I do believe that there are facts of prejudice that ultimately could and would be shown. And I've highlighted some of those and I think some of those are universal but in the interest of not stepping on Mr. Winsten's time and also --

THE COURT: Okay.

MS. SCHWEITZER: -- recognizing that there are other arguments to be had, I think that if it's all right with Your Honor, I'd move to the Rule 8 arguments.

THE COURT: Well, who is -- okay. But --

MS. SCHWEITZER: Or would you like Mr. Winsten --

THE COURT: -- I'm happy to get to those, I just -- who is covering Rule 4(f)?

MS. SCHWEITZER: Mr. Winsten.

THE COURT: Okay. So, I'll wait for you, then.

MS. SCHWEITZER: Would you like --

THE COURT: So, no, no --

MS. SCHWEITZER: -- I'd be happy to cede the podium --

THE COURT: -- Rule 8 --

MS. SCHWEITZER: I'm happy to cede the podium in any order --

THE COURT: I just don't -- I don't want to -- no, actually, I should really hear from the debtors on this point so that it doesn't get stale by the time they speak.

MS. SCHWEITZER: Okay, that's fine, Your Honor.

THE COURT: Okay? Okay. Which is, again, the due process point and, as I view it, that's really two separate points. One is whether the simple fact that these complaints were kept under seal and were not served until years after the statute of limitations is a violation of due process. And then secondly, whether there was insufficient notice for due process purposes of the extension motions and therefore they can be heard as if, you know, in essence, the orders are void or they should be considered brand new, on a brand new basis.

MR. FISHER: Your Honor, to begin by addressing just precisely those two points and then perhaps just to address more broadly some of the points that Ms. Schweitzer raised.

THE COURT: Okay.

MR. FISHER: Your first question ,Your Honor, is whether the fact that these complaints were filed under seal before the statute of limitations but then not unsealed and served until years later is itself some kind of per se violation of due process. Of course, our position is that that is not the case. There is no violation of due process here.

And the reason for that is because the right to repose is simply not a recognized liberty interest, as Your Honor has

pointed out, under the Constitution. And it's also the case that all the movants -- the movants have not cited a single case in which that kind of violation is a deprivation for purposes of due process. And as a threshold matter, in order to find a due process violation, Your Honor would have to find that the movants' Constitutional rights had been deprived in some way as a result of this procedure. They haven't been.

What we're talking about here, Your Honor, is not the deprivation of a Constitutional right, but we're talking about litigation prejudice. And Courts deal with litigation prejudice all the time and we don't mean in any way to minimize the possibility that certain movants very well may have suffered certain kinds of prejudice as a result of the extensive delay here in unsealing and serving the complaints.

THE COURT: Well, is it just litigation prejudice? Can't it be other prejudice, too? For example, someone that bought a company in reliance on the limitations period expiring if the, you know, where there's a very large claim?

MR. FISHER: So, that's a fair point. With respect to the overwhelming majority of movements (sic), the kinds of prejudice that are raised are witness' memories have faded or documents may no longer be available. And I would note that overwhelmingly, those representations are couched in the permissive: "This may have happened." So, in and of itself, the claim of litigation prejudice at this point, in so many of

the motions, is speculative. But, of course, to the extent that that kind of prejudice can be shown on a case-by-case basis, the Court will need to fashion ways to deal with the consequences of that prejudice and protect any particular movant from the consequences of that prejudice, on a case-by-case basis.

With regard to other claims of prejudice, again, Your Honor, such as the example that you raised where an entity purchased this business without knowledge and without reason to know that these preference claims had been filed against the purchased entity, that is a claim of prejudice that needs to be addressed in its own right, on a case-by-case basis. It's certainly not a per se -- it's not a Constitutional issue, but it is prejudice that would need to be addressed.

THE COURT: Okay. What about the notice of the actual motions, the extension motions?

MR. FISHER: So, Ms. Schweitzer described a range of kinds of notice that various movants may have gotten. And I suppose that the extreme case which really puts a point on the question is the case which I expect Mr. Gottfried will speak to, but you know, the case of Wagner-Smith, for example, where that entity was not a creditor, wasn't on the creditor matrix and, as far as we know, didn't receive actual notice of the preservation order. And even in that case, Your Honor, I would say that there is no Constitutional deprivation; this is not a

Constitutional issue. And the reason is because --

THE COURT: No, but wouldn't -- because there wasn't such notice, wouldn't the order not be effective as to them?

MR. FISHER: The reason I don't think so, Your Honor, is because under the Rules -- and I think that these orders, the first preserva -- we're talking about four orders; the first preservation order, which is the only order that directed sealing and then extended the 4(m) deadline for the first time, and then there were three extension orders that modified that first order only with respect to the 4(m) deadline and any other elements of that first order remained intact.

With regard to sealing and with regard to 4(m), there's no requirement of notice. Typically, in the 4(m) context, or often in the 4(m) context, there's no notice to the named defendant; the complaint hasn't been served yet. Frequently, a defendant cannot be located. But even where a defendant potentially could be located, under Rule 6, where someone moves for an extension of a deadline before expiration of that deadline, which is what happened here -- I mean, yes, there was extensive delay with regard to the unsealing and service of these complaints, but the debtors were diligent with respect to making sure that the deadlines were protected and for seeking relief from this Court in advance of the expiration of each 4(m) deadline. There's no notice that's required. And under Bankruptcy Rule 9018 which governs sealing, similarly,

there's no notice that's required.

So, in the absence of a notice requirement and in the absence of proof of a deprivation, I don't see how there can be a due process violation. And I don't think that movants in that position should be entitled to return to these orders as though they had never been entered and make new arguments with respect to those orders.

THE COURT: But if you know the party is affected by the relief, aren't they entitled to notice under 4(m)?

MR. FISHER: Well, what's curious here, Your Honor, is that -- and this goes to the rationale for sealing. What was -- these complaints don't contain state secrets; they contain basic information about preferential transactions with a whole host of defendants, most of which who were then current suppliers to Delphi. And it is, in fact, the fact that they were named as defendants in the lawsuit. That was the kind of information that Delphi intended to seal and that is -- and the reason is twofold. It wasn't just because we didn't want to disrupt then-current supplier relationships; although that is a very important reason, because maintaining the supplier relationships was critical to the reorganization proceeding.

THE COURT: I understand your argument, but since they didn't have the chance to respond to it, how should they be bound by that order? Since you knew who they were. I mean, why wouldn't it be covered by 60(b)(4)?

MR. FISHER: I return, Your Honor, to Rule 6(b) and Rule 9018, which provides that notice wasn't required. And at the end of the day, what happened to those movants, even the rare movant who will claim that it didn't have any notice, is that they are now subject to a complaint that was timely filed but not served until well after expiration of the statute of limitations. And as a technical matter that's justified under the Rules, to the extent that they've suffered any kind of prejudice, that prejudice can and will be addressed by the Court in the future, when the case is at an appropriate juncture to do so.

Your Honor, I'd like to return to just some of the points that Ms. Schweitzer made and respond to those, unless Your Honor has additional questions on these two specific points.

THE COURT: Well, 9006(b) requires a showing of cause, right? And I guess the issue I have there is if they are not given notice of anything that would let them know that this is going on, how could one say that they are bound by an order that says that it's for cause? It means that they never had the right either to dispute that or to appeal it.

MR. FISHER: The -- first of all, Your Honor, as Your Honor's aware, 4(m) does not require a showing of cause.

THE COURT: I understand --

MR. FISHER: But with regard to the 6(b) question, the

determination of cause was independent of what any movant would say. And that dovetails with the sealing because to invite particular defendants into court and to say, 'You're the subject of a preference action and we're going to put these on hold for a while and if you have anything to say about that, you know, come to court and be heard' defeats the purpose of sealing.

THE COURT: But they didn't know of it for the appeal purposes either, right? Anyway, I'll hear from the defendants on this one. You can go to the other points -- when you talk on the other point.

MR. FISHER: I think Ms. Schweitzer began by talking about the history of the case. And I think that in some sense, as between the movants and the reorganized debtor -- debtors, there are dueling versions of history here. And the movants are writing a kind of revisionist history. Of course, from 2005 until Delphi emerged from bankruptcy in October 2009, the spotlight was on the rehabilitation of Delphi and its emergence from bankruptcy.

And now, we're out of that, and we're looking at these claims that were preserved during the course of the reorganization proceedings and asking what have the practical consequences of that preservation been and how do we address those consequences. But the suggestion that there was, at any point, some intent to delay or some intent to cause litigation

harm to any party, is misplaced.

And when counsel referred to this Goldilocks idea that at first the debtors had so much money that it made sense to keep these cases under seal and not cause people to needlessly incur expenses and not impose those expenses on the debtor, because they were unlikely to ever be pursued, and then later the debtor had so little money that it would have been impossible and threaten the reorganization to be spending time and money prosecuting those cases, I think that that gives short shrift to what really happened in the course of the bankruptcy. And the truth is that as a result of these sealing orders, there are at least 565 named defendants who are not being prosecuted, who are not incurring costs to defend litigation, who are not imposing costs on the estate with regard to the prosecution of the litigation. And were it not for the sealing orders, there'd be a very different picture.

I think that when the Court looks at each order in its context, it will be clear that there was a record sufficient to justify entry of each order. And what the movants are seeking today, which is essentially to go back and truly rewrite history and vacate these four orders, talk about prejudice. I mean the ultimate prejudice here would be to DPH, which conscientiously tried to take steps to ensure that these valuable assets -- potentially valuable assets of the estate, would be preserved, in the event that it became necessary to

prosecute those actions.

To now go back and rewrite history and say that those orders that were properly entered and that were relied upon by the debtors are going to be undone, would deprive the reorganized debtors of enormously valuable claims after the fact. And I think that because we're not talking about a constitutional issue here, we ought to be talking about a balancing of prejudice. And I think, on the one hand, the prejudice to the reorganized debtors is extreme, because the consequences would be the wholesale loss of these claims that they attempted to preserve conscientiously through motions to this Court and validly entered orders of this court, on the one hand; and on the other hand, a host of movants who are differently situated, each of them suffering particularized, or claiming --

THE COURT: But the response is going to be, how could Delphi rely upon relief that was obtained without proper notice. I mean, that's going to be the response. No lawyer would rely on it.

MR. FISHER: Well, Your Honor, as to the vast majority of these cases, I don't think that there's a serious question as to notice. I mean, these -- the motions were served to the entire creditor matrix. They were entered on the docket. The plan and disclosure statement, it didn't require monitoring the docket. It was a public filing attached to Delphi's 8-K in

December 2007. The preservation order provided that Delphi could disclose the name of any particular defendant, if that defendant inquired.

And so there was a fair amount of notice here to the parties. Also it was noted on the record with regard to the first preservation motion and thereafter, that this entire procedure was reviewed by both statutory committees, which is an important thing to remember, because, of course, we're talking in the first instance, about a context in which there's an equity committee, and there's an expectation that everyone's going to be paid in full and that all of these cases are going to go away.

THE COURT: Well, the equity committee reviews really doesn't help at all. But the creditors' committee review has some -- helps your case somewhat.

MR. FISHER: The creditors' committee reviewed it. They have fiduciary duties to all of the unsecured creditors. They did not object. They approved the procedures. And notice was disseminated to the entire creditor matrix. It was very widespread notice. There may be -- I'm aware of Wagner-Smith, and we'll hear from Mr. Gottfried. There may be a defendant that received no notice. But even there, as I've already argued, I don't think that notice was required under the rules with respect to the relief that was being sought, which is sealing and a 4(m) extension.

THE COURT: Sealing of the complaints?

MR. FISHER: Yes, sealing of the complaints.

THE COURT: All right. Okay. I'm assuming your response to the point that the committee wants to maximize the value of this estate is that, in fact, creditors' committees very often look out for vendors who've received potential preferences, and often bargain on their behalf too, right?

MR. FISHER: Yes. But the rationale for the -- in terms of the costs that were saved as a result of the sealing, it's enormous costs to the estate, because hundreds of defendants who never ended up getting sued would have retained counsel, would have engaged in 26(f) conferences, would have begun to litigate preference cases that ultimately never saw the light of day.

And Ms. Schweitzer refers to how much it would cost to monitor the docket to find out whether there was an order that could potentially be of interest to a party that received a payment during the ninety days before Delphi filed for bankruptcy. Well, think about how much more it would cost in expenses, both to defendants and to the estate, if 742 cases that weren't going to get prosecuted were filed, served, counsel was retained, and litigation was begun.

THE COURT: Okay.

MR. FISHER: Unless Your Honor has further questions, I'll --

The movants' complaint that we haven't identified the specific debtor entity that made the transfer, and we haven't identified the specific transferee. And --

THE COURT: And that there's an antecedent debt.

MR. FISHER: An antecedent debt. And I think that the debtors have no choice but to concede that under Twombly and Iqbal, more detailed pleading would be required, at least according to some of the more recent cases, although, I don't know that there's a controlling case in this circuit yet describing exactly what that standard would entail.

And what we've attempted to do, and what we suggested in our opposition brief, was a practical way of cutting through this, and, essentially treating it as similar to a 12(e) motion and saying that to the extent that there's any defendant who cannot prepare its answer to this complaint, because knowing the date and the amount of the transfer is insufficient to allow it to track down the relevant information, we will supplement that and provide whatever additional information is needed in order to put them in a position to be able to respond to the complaint, which, at the end of the day, is what Rule 8, even after Twombly and Iqbal, is all about.

And so we're simply trying to be practical here.

THE COURT: Well, is there any -- two things. Is there any authority for the notion and -- I guess Twombly was after these were filed, too?

MR. FISHER: Yes.

THE COURT: Is there anything in the notion that you don't have to comply with them because it was filed beforehand?

MR. FISHER: I don't think that there's a case directly on point. Because, again, we have a situation where the case was filed before Twombly and Iqbal and then served after. I'm not aware of a case that's directly on point. So the question is how to bring these cases up to --

THE COURT: So then --

MR. FISHER: -- date with the new pleading standards.

THE COURT: Well, and on that, shouldn't there be a motion to amend? I mean, is there any authority for the mechanism you're proposing? I mean, if there's merit to the argument that you had filed these complaints under the laws that existed at the time, and there's, certainly, you know, the case law in the Southern District, was probably more on your side on that than not. As far as what you needed to show back then, wouldn't that just be a factor I'd take into account among other factors in your motion to amend? And then we'd have an amended complaint and everyone would know the complaint that they were looking to.

You know, if, in fact, you weren't able to show an antecedent debt, or you weren't able to show which debtor made the transfer, then, you know, there'd be a complaint that someone could move to dismiss even if, you know, I thought

there was enough to let the complaint be filed. But at least they'd see it as a -- and that could be one of their factors in objecting to the motion to amend, is that this complaint has no chance of succeeding because they still haven't identified the transferor, for example.

MR. FISHER: We think that's there's something very technical about the argument that's being made here. And that as a practical matter, based on the information that is supplied in the complaint, the movants are in an adequate position to respond intelligently to the complaint.

Sure, we could bring a motion seeking leave to amend these complaints. Alternatively, if the Court is going to rule that the complaints need to be repled to comply with the Twombly/Iqbal standard, we could do that.

THE COURT: Well, I guess I want to go back to my earlier question. I haven't seen a solution like the one you've proposed; do you have authority for that?

MR. FISHER: I don't have a case, Your Honor --

THE COURT: Okay.

MR. FISHER: -- that essentially converts a 12(b)(6) motion to a 12(e) motion. But conceptually that is what we had in mind. But if the problem is if 12(e) requires more information than what had been --

THE COURT: I think it's more than just having the defendant come to you and say I'm puzzled, I don't know how to

defend. I think it is an affirmative requirement to state a claim. And under Iqbal and Twombly and the cases, including Judge Gonzalez' case on preferences, there's certain key elements of the claim that require more than just the -- a recitation of the elements of the claim. I mean, that's really the -- that's really Twombly as opposed to Iqbal.

MR. FISHER: Right.

THE COURT: And that's, you know, basically, who made the transfer, and what was the antecedent debt? Something, other than just saying it was for antecedent debt. I mean, I think by listing the amount and the date, I think it was implicit that you're saying its defendant. But maybe I'm wrong about that. If you're asserting against some of the people 550 relief then you probably should say how they got it.

MR. FISHER: Well, I think that it's just that --

THE COURT: Not immediate -- not the transferee but subsequent transferee relief.

MR. FISHER: The strange thing about applying Twombly and Iqbal to a preference case is that what does it mean to say that a preference claim is plausible? I mean, it's plausible that Delphi paid these defendants the amounts that are indicated on the complaint on the dates that are indicated. And it's plausible that those payments were on account of antecedent debt.

THE COURT: First of all, it's not Delphi, there's

like forty-two debtors here. So it's not listed who did this. I think that's important. And that leaves the issue of antecedent debt.

I'm somewhat sympathetic to your point on that, although, the three judges that have considered this, including Judge Gonzalez, aren't. They all emphasize the need to say something about the antecedent debt, other than the conclusory statement that there's antecedent debt. Your point is well, why would any of the debtors be paying anyone unless there was an antecedent debt?

Well, the thing is it may not be antecedent, they may be paying in advance, they may be paying that day; COD. You know, that's the response I think.

MR. FISHER: And, Your Honor, it is important to say which debtor entity we're talking about. It is important to say exactly which transferee we're talking about. As a practical matter --

THE COURT: Let me say -- I'm going to cut you short.

MR. FISHER: Yes.

THE COURT: As a -- it seems to me the problem with what you're proposing is that you may not have a basis to say in your books and records that -- at least for the face of the complaint, that defendant X was owed a debt, that this was a payment on account of you may not have it. And I think your method basically sort of puts the onus on them to make that

part of your case for you.

MR. FISHER: What we're trying to avoid, Your Honor, is a situation where we now go back and correct these complaints by identifying the specific entities where we think, as a practical matter, the movants know full well by checking their own records --

THE COURT: But that's not -- that's not -- I don't think that's the test, because, again, that shifts the burden of proof. You know, you basically force them to show we don't know.

MR. FISHER: Well, then, we go back and we provide them with this information. We could provide it to them in documentary form under 12(e), or we could provide it to them in the form of an amended complaint.

THE COURT: To me that's --

MR. FISHER: And then say it's a new motion to dismiss.

THE COURT: To me that's part of the merits of a motion to amend. If, in fact, they knew and it's no big deal and they know -- they've always known this, then that's a fact in your favor as well as the fact that the law changed. You know, but I think it should all be viewed in the context of a motion to amend.

Now, I have not reviewed every complaint. But as I -- I've reviewed enough to see that I think they're form

Requiring for them to do all those things seems to me to be the minimum of fairness --

THE COURT: Well, look, it's a motion for leave to amend the complaint on unusual circumstances. It's really their risk if I turn them down again, right? So --

MR. WINSTEN: My only point was that it should be Iqbal plus, not Iqbal minus.

THE COURT: Well, I don't know what that means. And, frankly, I think the Supreme Court's been pretty careful not to turn Iqbal into a plus.

MR. WINSTEN: Right.

THE COURT: So --

MR. WINSTEN: But these are our --

THE COURT: But I think that the risk of being turned down on the basis of the complaint still isn't good enough is a serious enough -- the consequences of that are serious enough so I assume that the plaintiffs are going to be pretty careful.

MR. WINSTEN: A suggestion when we get there is that they ought to attach a draft --

THE COURT: Well, you have to do that.

MR. WINSTEN: Yes. So we know --

THE COURT: Yeah, absolutely.

MR. WINSTEN: -- what the form's going to be.

THE COURT: Got to do that.

MR. WINSTEN: Let me move to assumed contracts. This

re Hydrogen, LLC, 2010 WL 1609, 536 (Bankr. S.D.N.Y., April 20, 2010). In re McLaughlin, 415 B.R. 23 (Bankr. D.N.H. 2009) In re Caremerica Inc., 409 B.R. 737 (Bankr. E.D.N.C. 2009).

I've stated during oral argument why I believe all three of these elements of the claim need to be pled with more clarity in the context. In particular, while it may seem at first glance that anyone receiving money has to receive it for some purpose and therefore it's reasonable to infer in the context that that purpose is to pay an antecedent debt, that is not always the case. Debtors may pay COD or in advance. And in addition, in identifying the debt, a complaint may therefore also enable a debtor to show that the creditor, or the transferee, rather, received more than it would otherwise in a Chapter 7 case which would, in the case of a contract that had been subsequently assumed, be a basis for dismissing the claim.

So I concluded that the complaints need to be dismissed, and I've given DPH Holdings forty-five days from today to file a motion for each complaint seeking leave to amend each complaint. That motion should attach the form of complaint -- or must attach the form of complaint that would be proposed to be filed as an amended complaint. And if such a motion is not filed for any particular complaint, that complaint will be dismissed upon the movant submitting to me a proposed order dismissing the complaint, CC'ing on the e-mail counsel for DPH and stating that in fact notwithstanding my